

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:	)	
	)	
XXXXXX XXXX XXXXXXXX,	)	CASE NO. XX-XXXXXX
	)	
Debtor.	)	Chapter 13
	)	

**MOTION OF [CREDITOR] FOR RELIEF FROM THE AUTOMATIC STAY**

\_\_\_\_\_ (the “Creditor”) moves for relief from the automatic stay imposed by the Bankruptcy Code pursuant to 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001 and 9014, and in support of this motion states:

1. \_\_\_\_\_ (the “Debtor”) filed a voluntary petition under Chapter 13 of the Bankruptcy Code on \_\_\_\_\_ (the “Petition Date”).

2. The Creditor is a holder of a promissory note dated \_\_\_\_\_, (the “Note”) signed by the Debtor, in the principal amount of \$ \_\_\_\_\_. A copy of the Note is attached hereto as Exhibit A.

3. The Note requires monthly payments of \$ \_\_\_\_\_, which includes interest at the rate of \_\_\_\_%. The term of the Note is \_\_\_\_ years, and the Note matures on \_\_\_\_\_.

4. As security for the Note, the Debtor gave the Creditor a real estate deed of trust on the Debtor’s real property located at \_\_\_\_\_ (the “Property”). The Property is more particularly described on the deed of trust recorded at Book \_\_\_\_\_, Page \_\_\_\_\_, with the \_\_\_\_\_ County Register of Deeds. The deed of trust was recorded on \_\_\_\_\_. A copy of the recorded deed of trust is attached hereto as Exhibit B.

**Or, In the Alternative**

4. As security for the Note, the Creditor took a security interest in a \_\_\_\_\_ [description of the motor vehicle] (the “Property”), and noted its interest on the Property’s certificate of title on \_\_\_\_\_. A copy of the certificate of title is attached hereto as Exhibit B.

5. As of the Petition Date, the Debtor was in arrears on the Note in the amount of \$\_\_\_\_\_.

6. The Plan calls for the Debtor to make post-petition payments on the secured debt directly to [the Creditor outside the Plan / the Trustee through monthly Plan payments.]

7. As of the date of the filing of this Motion, the Debtor is in arrears for the Debtor's post-petition obligations in the amount of \$\_\_\_\_\_, representing non-payment for the month(s) of \_\_\_\_\_.

Or, if the debt is paid under the plan:

7. As of the date of the filing of this Motion, the Debtor has failed to make Plan payments to the Trustee, as required by the Plan, and the Debtor is delinquent in Plan payments in the approximate amount of \$\_\_\_\_\_. Pursuant to the Plan, the Creditors was to receive \$\_\_\_\_\_ per month from the Trustee, and the Creditor has not received any Plan payments for the month(s) of \_\_\_\_\_.

8. For purposes of this Motion, the fair market value of the Property is \$\_\_\_\_\_, which valuation is based on \_\_\_\_\_ (e.g., the Debtor's schedules, an appraisal, etc.).

9. The payoff balance on the note is \$\_\_\_\_\_.

10. The Creditor requests relief from the automatic stay of the Bankruptcy Code on the basis that: [check all that apply]

A. 11 U.S.C. § 362(d)(1)

☐ Creditor's interest in the Property is not adequately protected by an equity cushion

☐ The fair market value of the Property is declining and payments are not being made to the Creditor to sufficiently protect the Creditor's interest in the Property

☐ The Debtor has failed to insure the property despite the Debtor's obligation to insure the collateral under the terms of the parties loan and/or security documents

☐ Payments have not been made as required by an adequate protection order previously entered by the court (include an explanation) \_\_\_\_\_

☐ The Debtor has failed to make payment(s) directly to the Creditor as required by the Plan

☐ The Debtor has failed to make Plan payment(s) to the Chapter 13 Trustee

☐ The Debtor filed the bankruptcy case in bad faith (include an explanation)

☐ Treatment of the Creditor's claim in the Plan is inadequate (include an explanation) \_\_\_\_\_

☐ Other (include an explanation) \_\_\_\_\_

B. 11 U.S.C. § 362(d)(2)

[ ] The Debtor does not have equity in the Property, and the Property is not necessary to an effective reorganization because \_\_\_\_\_ (explain why).

C. 11 U.S.C. § 362(d)(4)

[ ] The Creditor is seeking relief from the automatic stay as to real property and the Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved: (A) the transfer of all or part ownership of, or interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property (provide explanation).

**WHEREFORE**, the Creditor respectfully requests the Court for an order that:

A. Lifts the automatic stay of 11 U.S.C. § 362(a) with regards to the Property, and that authorizes the Creditor to take action against the Property pursuant to applicable State law;

B. Waives the ten day stay of the order as provided by Fed. R. Bankr. P. 4001(a)(3);

C. Grants such other relief as the Court deems proper.

D. In the alternative, should the Court deny the Creditor's request to lift the automatic stay, the Creditor requests that the Court award it adequate protection pursuant to section 361 of the Bankruptcy Code.

This the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Attorney for Debtor  
(Name)  
(Address)  
(Telephone Number)